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**Case Summary posted by the Task Force on Access to Justice**

**European Union: Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen eV v. Bezirksregierung Arnsberg (European Union), C-115/09 *Trianel***

1. Key issue	NGO standing (art 2.5, art. 9.2) - National legislation cannot limit the opportunity to appeal decisions likely to have significant effects on the environment to those alleging impairment of an individual interest, rather than a public interest, when the claimant alleges infringement of a law flowing from EU environment law.
2. Country/Region	European Union
3. Court/body	Court of Justice of the European Union, 4th Chamber
4. Date of judgment /decision	2011-05-12
5. Internal reference	C-115/09 (Celex 62009J0115)
6. Articles of the Aarhus Convention	Art. 2 para. 5; Art. 6; Art. 9, paras. 2-4.
7. Key words	Environmental Impact Assessment; EIA Directive; Habitats Directive; access to justice; NGOs; standing; impairment of a right; national legislation

8. Case summary

This case was a referral to the CJEU for a preliminary ruling. It involves issues relating to NGO standing arising under Directive 86/337 ("the EIA Directive"), as amended by Directive 2003/35.

A company ("Trianel") was granted a permit to build and operate a coal-fired power plant in Lünen, Germany. The plant was to be situated within 8 km. of five Habitats Directive designated special conservation areas. The local chapter of Friends of the Earth (FoE) sought to have the permit annulled by the Higher Administrative Court for the Nordrhein-Westfalen Land. FoE argued that the permit infringed provisions of German law that transposed the Habitats Directive. The German court found that under German law, an NGO such as FoE, like any other claimant, could not bring an action for an infringement of law. Its own rights must be infringed in order to appeal to a court. The particular law FoE alleged to be infringed did not protect individual rights. Therefore, FoE did not have the right to seek an annulment of the permit. The court realized that this provision of German law seemingly undermined provisions of the EIA Directive (reflecting Article 9.2 of the Aarhus Convention), which guaranteed the right of some NGOs to have access to justice, and referred the case to the CJEU.

The CJEU examined Article 10a of the EIA Directive, which requires Member States to allow members of the public concerned who either have a sufficient interest or maintain an impairment of a right to have access to a judicial appeals process. They must be allowed to challenge the legality of decisions on matters for which the opportunity for public participation is required under that Directive. Further, Article 10a states that national legislation defining sufficient interest and impairment of a right must be consistent with the objective of giving the public concerned "wide access to justice". Although the provision leaves the Member States a significant discretion to determine what constitutes impairment of a right and other conditions for the admissibility of actions of individuals, the same is not true for the environmental non-governmental organisations meeting the requirements referred to in Article 1(2) of Directive 85/337. They are to be deemed to have sufficient interest and rights capable of being impaired in rules which are precise and not subject to other conditions. Therefore, non-governmental organisations promoting environmental protection should have a right to rely before the courts, in an action contesting a

decision authorising projects 'likely to have significant effects on the environment' for the purposes of Article 1(1) of Directive 85/337, on the infringement of the rules of national law flowing from Article 6 of the Habitats Directive, even where, on the ground that the rules relied on protect only the interests of the general public and not the interests of individuals, national procedural law does not permit this.

The CJEU concluded that Article 10a of the EIA Directive precludes national legislation that does not allow environmental NGOs to bring a development permit appeal alleging a violation of a rule flowing from EU environmental law, if the reason for not allowing the appeal is that rule protects only the public interest and not an individual interest.

9. Link addresses

<http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=c-115/09&td=ALL>

[http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence\\_prj/EUROPEAN\\_UNION/ECJ\\_C115-09\\_Trianel/EU\\_ECJ\\_C115-09\\_Trianel.pdf](http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/EUROPEAN_UNION/ECJ_C115-09_Trianel/EU_ECJ_C115-09_Trianel.pdf)